

WENDELL L. GARRETT d.b.a. GARRETT INDUSTRIES

IBLA 78-608

Decided January 24, 1979

Appeal from a decision of the California State Office, Bureau of Land Management, declaring portions of certain mining claims null and void ab initio. CA MC 1787, CA MC 8069, CA MC 8070, CA MC 8071.

Affirmed.

1. Mining Claims: Withdrawn Land—Withdrawals and Reservations: Effect of—Withdrawals and Reservations: Revocation and Restoration

A mining claim located on land which has been previously withdrawn from location under the mining laws may be properly declared null and void ab initio without a hearing. Such a claim confers no rights on the locator or a subsequent grantee and will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. It is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they were withdrawn.

APPEARANCES: Wendell L. Garrett, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Wendell L. Garrett d.b.a. Garrett Industries appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated July 31, 1978, declaring null and void ab initio, in part, appellant's Jilda Lode #1 lode mining claim and Jilda Placer # 1, #2, and #3 placer mining claims.

The claims in question were located by appellant's grantor on February 15, 1968, March 27, 1965, March 27, 1965, and March 28, 1965, respectively. The claims are located in the W 1/2 sec. 5 and E 1/2 sec. 6, T. 13 S., R. 19 E., San Bernardino meridian.

The BLM decision states that appellant's claims are partially located on lands which are withdrawn and reserved for use of the Department of the Navy for the Chocolate Mountain Aerial Gunnery Range. The lands are withdrawn pursuant to the Act of September 6, 1963 (77 Stat. 152), and subsequent renewals withdrawing the lands from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

Specifically the Act of September 6, 1963 (77 Stat. 152), and subsequent renewals withdrew the N 1/2 of sec. 5 and the N 1/2 of sec. 6 T. 13 S., R. 19 E., San Bernardino meridian. Hence, BLM's decision properly declared null and void ab initio those portions of the above claims lying within this description.

Appellant Garrett appeals from BLM's decision by calling to our attention the fact that he and his grantor have occupied the claim sites for 13 years, during which time all necessary assessment work has been faithfully completed. Appellant further notes that he has entered into a contract to sell his claims to a third party with plans for development of the property.

In the event that BLM's decision is affirmed, appellant seeks compensation for the portion of those claims which are declared null and void.

In his statement of reasons for appeal, appellant has not set forth any legal basis for our reversal of the BLM decision. The cases are numerous and consistent in holding that a mining claim located on land which has been previously withdrawn from location under the mining laws is null and void ab initio. Such a claim confers no rights on the locator or a subsequent grantee. Rod Knight, 30 IBLA 224 (1977).

Appellant notes that the lands do not appear to have been used by the Department of the Navy for a period of years. However, in Rowe M. Bolton, 5 IBLA 226, 227 (1972) we said:

Lands which have been withdrawn from entry under some or all of the public land laws remain so withdrawn until the revocation or modification of the order of withdrawal, and it is immaterial whether the lands are presently being, or have ever been, used for the purposes for which they were withdrawn.

[1] A mining claim located on lands at a time when the records of the Department of the Interior show that the lands are withdrawn from location may properly be declared null and void without a hearing. Charles R. Nielsen, 30 IBLA 235 (1977); W. E. Wicks, 14 IBLA 356, 359 (1974). The underlying reason for this position is that the claimant cannot possibly produce evidence to prove the validity

of a claim upon land that was not open to mineral entry at the time of attempted location. Charles R. Nielsen, supra. Further, such a claim will not be validated by the modification or revocation of the order of withdrawal to open the land thereafter to mineral entry. James Messano, 35 IBLA 383 (1978); Floyd W. McCarty, 28 IBLA 246 (1976).

Our holding that appellant acquired no rights by the location of a claim on withdrawn lands answers appellant's argument that he be compensated for his interest in the lands and for his efforts over the 13-year term of the claims. Appellant simply has no protectable property interest in these claims. Jack D. Canon et al., 30 IBLA 112 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur.

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James L. Burski  
Administrative Judge

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Newton Frishberg  
Chief Administrative Judge

